

THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,
Plaintiff,

v.

JIMMY GENE MILLER,
Defendant.

NO. 2:21-cr-00218RAJ

ORDER ON DEFENDANT'S
MOTIONS IN LIMINE

THIS MATTER comes before the Court upon defendant Jimmy Gene Miller's Motions in Limine. Dkt. 31. Having considered the motions, the government's responses, and the files and pleadings herein, the Court **GRANTS in PART** and **DENIES in PART** the defendant's motions.

The defendant seeks to exclude ten categories of evidence at his trial which is currently scheduled for December 5, 2022. For the most part, the government indicated it does not intend to seek the introduction of many of the challenged categories of evidence. The Court will separately address each of the defendant's motions.

1. Stipulation to Status as a Convicted Felon

The defendant is charged in Counts 1 and 3 with the offense of Unlawful Possession of a Firearm and in Count 2 with Unlawful Possession of Ammunition in violation of Title 18 U.S.C. § 922(g)(1). One of the elements for these charges requires proof that Mr. Miller had previously been convicted of a crime punishable by imprisonment for a term exceeding one year. Mr. Miller indicated he will stipulate at

1 trial that, prior to November 19, 2021, he had at least one felony conviction for a crime
2 punishable by imprisonment for a term exceeding one year. Dkt. 31. The government
3 has accepted this stipulation and indicated it will not seek to introduce the specifics of his
4 felony conviction in its case in chief. Dkt. 56. The government did, however, add to the
5 defendant's stipulation that Mr. Miller "knew he was prohibited from possessing firearms
6 and ammunition as a result of that felony conviction." Dkt. 56. The government's
7 modification of the proposed stipulation exceeds the boundaries of what the defendant
8 tendered. Mr. Miller has only relieved the government of proving one specific element.
9 The defendant's proposed stipulation specifically indicates he is limiting the stipulation
10 to "...that specific element." Dkt. 31.

11 The defendant is charged with offenses that require knowledge of one's status that
12 bars one from possessing a firearm. The defendant cites Ninth Circuit Model Jury
13 Instruction 8.65 from the 2010 edition as the basis for his proposal, which has been
14 replaced by Model Jury Instruction 14.16 in the 2022 edition. This modification is
15 predicated upon *Rehaif v. United States*, 139 S. Ct. 2191 (2019) that concluded "[I]n a
16 prosecution under 18 U.S.C. § 922(g) and § 924(a)(2), the Government must prove both
17 that the defendant knew he possessed a firearm and that he knew he belonged to the
18 relevant category of persons barred from possessing a firearm."

19 It appears to the Court that what has been tendered is an offer to stipulate by the
20 defendant and a counter-offer modification from the government with an additional
21 condition. Under these facts, the Court is uncertain if there is a clear consensus on the
22 terms of the stipulation. The parties are directed to meet and confer and then clarify the
23 specifics of this stipulation. The Court reserves judgment on this issue pending
24 clarification from the parties.

25 **2. Testimony and Arguments Regarding Gangs and Gang Affiliation**

26 Mr. Miller seeks to exclude all references to gangs and gang affiliation. The
27 government has confirmed that it does not intend to seek such evidence. It does,
28 however, reserve the right to raise gang affiliation on cross-examination if the defendant
opens the door via his own testimony or through the testimony of any witness he may

1 call. The Court will hold the government to its word and affirmatively require the
2 government to advise the Court outside the presence of the jury if it believes the door has
3 been adequately opened to warrant introduction of such evidence. Otherwise, the
4 defendant's motion is **GRANTED**.

5 **3. Testimony and Argument Regarding Drug Trafficking**

6 Mr. Miller seeks to exclude any testimony about his being investigated for drug
7 trafficking. The government indicated it does not intend to introduce evidence of drug
8 trafficking. The Court will hold the government to its word and such evidence is
9 excluded. The defendant's motion is thereby **GRANTED**.

10 **4. Testimony and Argument Regarding Connection Between Firearms**
11 **and Drug Trafficking**

12 Mr. Miller seeks to exclude testimony regarding any relationship between firearms
13 and drug trafficking. The government indicated it does not intend to introduce evidence
14 regarding the connection between drug trafficking and firearms. The Court will hold the
15 government to its word. The defendant's motion is thereby **GRANTED**.

16 **5. Testimony and Argument About Firearm Deaths, Shootings, or Crimes**
17 **Committed with Firearms**

18 Mr. Miller seeks to exclude any testimony regarding the number of firearm deaths,
19 shootings, or other crimes committed with firearms. The government indicated it does not
20 intend to introduce evidence regarding firearm deaths, shootings, or crimes committed
21 with firearms other than the crimes for which Mr. Miller has been charged. The Court
22 will hold the government to its word. The defendant's motion is thereby **GRANTED**.

23 **6. Testimony About the Deployment of Drug Detection K9s**

24 Mr. Miller seeks to exclude testimony on grounds of relevancy the fact that police
25 conducted a drug detection K9 sniff outside of his apartment and vehicles. The
26 government indicated it does not intend to introduce such evidence. The Court will hold
27 the government to its word. The defendant's motion in thereby **GRANTED**.

1 **7. Testimony and Argument About Miller's Criminal History**

2 Mr. Miller seeks to exclude several categories of evidence regarding his past
3 history, including convictions more than ten years old, misdemeanors, juvenile
4 convictions, felony convictions that are not crimes of dishonesty, and arrests that did not
5 result in conviction. The motion includes excluding reference to the underlying facts of
6 Mr. Miller's prior convictions.

7 The government indicated it does not intend to seek introduction of such evidence
8 but seeks to reserve the right to introduce 404(b) evidence regarding the defendant's prior
9 firearms case. Based upon the limited argument in the government's opposition, it
10 appears that if the defendant offers evidence or a defense that another person was
11 responsible for the firearm, the government may move to introduce specific facts of
12 defendant's prior firearms case. The basis for this theory is that such evidence would
13 bear on the defendant's plan and knowledge. Generally, these two categories fit within
14 the confines of 404(b) admissible evidence.

15 The Court will reserve ruling on the government's tendered reservation and make
16 a ruling if the defendant actually offers evidence under the theory suspected by the
17 government. If the defendant tenders such a defense, the Court will require the
18 government to inquire outside the presence of the jury if the Court will permit the 404(b)
19 evidence the government believes is otherwise admissible.

20 Notwithstanding, it does not appear the government opposes other aspects of the
21 defendant's motion. Thus, the defendant's motion to exclude felony and misdemeanor
22 convictions more than ten years old other than the Felon in Possession of Firearm
23 convictions (2008 and 2014), misdemeanors of any kind, juvenile convictions, and arrests
24 that did not result in conviction is **GRANTED**.

25 **8. Testimony That Miller Was On Supervised Release**

26 Mr. Miller seeks to exclude evidence that he was on federal supervised release at
27 the times charged in the Indictment. The government indicated it does not intend to
28 introduce such evidence unless the defendant opens the door. The Court will hold the
government to its word. If the government believes any examination or offer by the

1 defense has opened the door, it shall first seek permission from the Court outside the
2 presence of the jury. Otherwise, the defendant's motion is **GRANTED**.

3 **9. Evidence Regarding Information Provided by Confidential Informants**

4 Mr. Miller seeks to exclude members of law enforcement from reciting hearsay
5 statements made by confidential informants or during interviews of witnesses involved in
6 this case. The government indicated it does not intend to introduce evidence regarding
7 any information provided by the confidential informant in this case. The Court will hold
8 the government to its word. The defendant's motion is thereby **GRANTED**.

9 **10. Evidence from FBI Laboratory DNA Analysis**

10 Mr. Miller notes that several items seized in this case were tested for fingerprints
11 and DNA residue. It is undisputed by the government that the DNA testing resulted in
12 mixed findings regarding the contributor(s). The defendant seeks to limit the
13 government's offering of this evidence to a statement that the items were the subject of
14 laboratory analysis and nothing of probative value could be determined.

15 The Court disagrees with the defendant's proposed limitation. The Court finds
16 that the mere fact that the DNA results were not more definitive goes to the weight to be
17 accorded to this evidence and not its admissibility. Moreover, the defense has not
18 articulated any argument that the evidence would confuse the jury or unfairly prejudice
19 the jury's consideration of such evidence. The defense will have the opportunity to fully
20 examine the offered witness on this issue and point out the deficiencies in the DNA
21 evidence at trial. For these reasons, the defendant's motion is **DENIED**.

22 For all of the foregoing reasons, the defendant's motions are **GRANTED in**
23 **PART** and **DENIED in PART**.

24
25 DATED this 17th day of June, 2022.

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28 HON. RICHARD A. JONES
United States District Judge